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1-16-01  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH M. CRAVEIRO, JR. :  
Petitioner : No. 1:CV-00-1714  
v. : (Judge Caldwell)  
UNITED STATES OF AMERICA; :  
WARDEN OF L.S.C.I. ALLENWOOD, :  
Respondents :

FILED  
HARRISBURG  
JAN 12 2001  
MARY E. D'ANDREA, CLERK  
DEPUTY CLERK

RESPONDENTS' BRIEF IN OPPOSITION  
TO PETITIONER'S MOTION FOR DISCOVERY

This is habeas corpus matter brought under 28 U.S.C. §2241, by a federal prisoner, Joseph M. Craveiro, Jr., who presently is confined at the Low Unit of S.C.I. Allenwood. Craveiro is challenging a federal sentence he received in the United States District Court for the District of Rhode Island.

Currently before the Court is petitioner's Motion for Discovery.<sup>1</sup> The motion should be denied.

First, discovery is not authorized in §2241 cases. While other statutes authorize discovery in collateral challenges to convictions, see Rule 6 following 28 U.S.C. §2254, such is not the case in §2241 cases. See Harris v. Nelson, 394 U.S. 286, 294-299

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<sup>1</sup> Although Craveiro's certificate of service indicates the motion was mailed to the undersigned on December 21, 2000, the postmark on the envelope is dated December 28, 2000. Respondents, therefore, have used this later date to calculate their due date for opposing the motion.

(1969) (holding that the Federal Rules of Civil Procedure regarding discovery do not apply in §2241 habeas petitions).

Second, in opposing the habeas petition, respondents have argued that Craveiro cannot bring his claims under §2241. This response to the habeas petition is the equivalent of a dispositive motion. When a dispositive motion is pending, particularly when it questions whether a case can even be maintained, discovery can and should be stayed until the motion is resolved. Sinclair Refining Co. v. Jenkins Petroleum Process Co., 289 U.S. 689 (1932); Wyatt v. Kaplan, 686 F.2d 276, 284 (5th Cir. 1982); United Presbyterian Church in the U.S.A. v. Reagan, 738 F.2d 1375, 1382-83 (D.C. Cir. 1984); Ingram Corp. v. J. Ray McDermott & Co., 698 F.2d 1295, 1304 n.13 (5th Cir. 1983); Tamari v. Bache Halsey Stuart, Inc., 619 F.2d 1196, 1203 (7th Cir.); 4 Moore's Federal Practice, §26.69.

In the instant case, Craveiro's §2241 petition actually raises a claim that can be raised only by a §2255 motion. Craveiro is challenging the validity of his federal sentence imposed by the United States District Court for the District of Rhode Island and, therefore, he cannot maintain a §2241 habeas petition. See Application of Galante, 437 F.2d 1164, 1165 (3<sup>rd</sup> Cir. 1971) (if a prisoner attempts to challenge his conviction or sentence under 28 U.S.C. §2241, the habeas petition must be dismissed for lack of jurisdiction). As such, to permit discovery before it is even

determined whether Craveiro can maintain this \$2241 claim would be burdensome and a waste of resources.

Thus, petitioner is not entitled to discovery and his motion requesting leave to conduct discovery should be denied.

Respectfully submitted,

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Dated: January 12, 2001

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH M. CRAVEIRO, JR., :  
Petitioner :  
 :  
v. : CIVIL NO. 1:CV-00-1714  
 :  
U.S.A., et al. : (Judge Caldwell)  
Respondent :

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.


That on January 12, 2001, she served a copy of

BRIEF IN OPPOSITION TO  
MOTION FOR DISCOVERY

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

Addressee:

Joseph M. Craveiro  
Reg. No. 02630-070  
LSCI Allenwood  
P.O. Box 1000  
White Deer, PA 17887

  
SHELLEY L. GRANT  
Paralegal Specialist